

ORDINANCE # 86-3

AN ORDINANCE ESTABLISHING ALL RULES AND REGULATIONS FOR THE CONTROL AND OFFERING OF CABLEVISION SERVICES TO HANNA, INDIANA.

BE IT HEREBY ORDAINED BY THE LAPORTE COUNTY BOARD OF COMMISSIONERS, LAPORTE COUNTY, INDIANA.

SECTION 1. Purpose.

A. The purpose of this chapter is to provide regulatory provisions of cable television system in the Town.

B. The ordinance codified in this chapter shall be known and may be cited as the "Hanna Cable Television Ordinance."

SECTION 2. Definitions. For the purpose of this chapter, the following terms, phrases, words and derivations shall have the meaning given in this section. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

A. "Company" means Oak Cable Systems, Inc. maintaining its offices in Kouts, Indiana the grantee of rights under the cable television ordinance codified in this chapter.

B. "Federal Communications Commission" or "FCC" means that federal agency constituted by the Communications Act of 1934 as amended.

C. "Gross subscriber revenues" means only those revenues derived from the monthly service charges paid by subscribers located within the County for regular cable television reception service, which service includes only the transmission of broadcast signals and the programming presented on the required access and origination channels, if any. Gross subscriber revenues shall not include any revenues received:

1. As reimbursement of expense in the operation of any access channels;
2. As advertising payments;
3. From the leasing of cable channels;
4. From programs for which a per-channel, per-program, or tier charge is made; and

5. From furnishing other communications and nonbroadcast services, either directly or as a carrier for another party or any other income derived from the system. Gross subscriber revenues shall also not include revenues received as installation charges and fees for reconnections, inspections, repairs or modifications of any installments.

D. "Person" means any person, firm, partnership, association, corporation, company or organization of any kind.

E. "System" means the lines, fixtures, equipment, attachments and appurtenances thereto which are used in the construction, operation and maintenance of the community antenna television system authorized in this chapter.

SECTION 3. Findings--Granting of Franchise. The cable television ordinance codified in this chapter which grants to Oak Cable Systems, Inc. the nonexclusive right to construct, operate and maintain a cable television system in the County, was passed and adopted by the County Board of Commissioners after a full, open and public proceeding. Said proceeding was held after public notice was given and afforded all interested parties the opportunity to comment upon the legal, character, financial, technical and other qualification of the company. Having received at said proceeding all comments regarding the qualifications of the company, the County finds that the company possesses the necessary legal, technical, character, financial and other qualifications and that the company's construction arrangements are adequate and feasible. Therefore, the County grants to the company a nonexclusive franchise, right and privilege to construct, erect, operate modify and maintain, in, upon, among, across, above and over and under the highways, streets, alleys, sidewalks, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto, in the County poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the County of a cable television system for the purpose of distributing television and radio signals, and other electronic impulses in order to furnish television and radio programs, and various communications and other electronic services to the public. The right so granted includes the right to use and occupy said streets, alleys, public ways and public places and all manner of easements for the purposes set forth in this chapter.

SECTION 4. Compliance--Required Generally. The company shall, at all times during the life of the cable television ordinance codified in this chapter, be subject to all lawful exercise of the police power by the County and to such reasonable regulation as the County shall hereafter by resolution or ordinance provide. The construction, operation and maintenance of the system by the company shall be in full compliance with such portions of the National Electrical Safety Code as may be applicable and as the same may be amended and revised from time to time, and in full compliance with all other applicable rules and regulations now in

effect or hereinafter adopted by the Federal Communications Commission, the County or any other agency of the state or the United States, which may hereafter acquire jurisdiction of the operations of the company authorized in this chapter.

SECTION 5. Compliance--National Electrical Safety Code. All facilities and equipment of the company shall be constructed and maintained in accordance with the requirements of the National Electrical Safety Code.

SECTION 6. Compliance--FCC Rules and Regulations. The company shall, at all times, comply with the rules and regulations governing CATV operations promulgated by the FCC.

SECTION 7. Modification of FCC Rules. Consistent with the requirements of Rule 76.31 (a) (6) of the FCC, any modification of Rule 76.31 resulting from amendment thereto by the FCC and shall be incorporated in this chapter by specific amendments thereto by lawful action of the County Board of Commissioners within one year from the effective date of the FCC's amendment or at the time of renewal of the ordinance codified in this chapter, whichever occurs first.

SECTION 8. Transfer. The franchise shall not sell or transfer its system to another, nor transfer any rights under this chapter to another without written notice and approval by the County; provided, that such approval shall not be unreasonably withheld if the vendee, assignee or lessee has filed with the appropriate official of the County an instrument duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of this chapter and agreeing to perform all conditions thereof.

SECTION 9. Company Rules and Regulations. The company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the company to exercise its rights and perform its obligations under this chapter, and to assure an uninterrupted service to each and all of its customers.

SECTION 10. Franchise--Term. The franchise granted the company in this chapter shall terminate twenty-five (25) years from date of grant, subject to renewal for additional twenty-five (25) year periods of duration on the same terms and conditions as contained in this chapter, and as are consistent with the requirements of Rule 76.31 of the FCC. If company has reasonably performed to the requirements and conditions of this franchise, the County will not unreasonably withhold granting a renewal of this franchise.

SECTION 11. Franchise--Renewal. The company shall be a party to any such proceedings and any other proceedings in which its rights, privileges or interest would be affected and shall be fully entitled to such due process rights as may be available under applicable laws, ordinances, rules and regulations.

SECTION 12. System Construction, Maintenance and Procedures.

A. Upon grant of the ordinance codified in this chapter to construct and maintain a cable television system in the County, and in furtherance of the company's execution of contracts with public utility companies, the company may obtain right-of-way permits from appropriate state, county and federal officials necessary to cross highways or roads under their respective jurisdictions, to supply main trunk lines from the company's receiving antennas. The company shall construct its cable system using material of good and durable quality, and all work involved in the construction, installation, maintenance and repair of the cable system shall be performed in a safe, thorough and reliable manner. Any municipal property damaged or destroyed shall be promptly repaired or replaced by the company and restored to serviceable condition.

B. In the event that at any time during the period of the ordinance codified in this chapter the County lawfully elects to alter or change the grade of any street, alley or other public way, the company, upon reasonable notice by the County shall remove, relay or relocate its poles, wires, cables underground conduits, manholes and other fixtures at its own expense.

C. The company shall, on the request of any person holding a building moving permit issued by the County, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same and the company shall have the authority to require such payment in advance. The company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

D. The company shall provide, upon request and without charge, service to any municipal buildings owned and operated by the County and to any public elementary or secondary school. This shall mean only an energized cable to such building. The cost of any internal wiring shall be borne by the institution.

SECTION 13. Construction Schedule. The company shall accomplish significant construction at least twenty percent (20%) within one (1) year after receiving FCC certification and other necessary federal approvals, and shall thereafter reasonably make cable service available to all residents of the County, subject to the line extension provisions of Section 14, within two (2) years after receiving above federal approval.

SECTION 14. Line Extension.

A. It shall be the obligation of the company to serve all residents of the Town except to the extent that density of homes, adverse terrain or other factors render providing service impracticable, technically unfeasible or economically noncompensatory. For purposes of determining compliance with the provisions of this section, the company shall extend service to new subscribers at the normal installation charge and monthly rate for customers of that classification where there are an average of forty-five (45) homes per each linear mile of new cable construction.

B. In the event the requirements of subsection A are not met, extensions of service shall be required only on a basis which is reasonable and compensatory to the company.

#### SECTION 15. County Rights.

A. County Rules. The right is reserved by the County to adopt, in addition to the provisions contained in this chapter and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power; provided, that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights granted in this chapter, and shall not be in conflict with the applicable laws of the state or the United States.

B. Emergency or Disaster. In the case of any emergency or disaster, the company shall, upon request of the County make available its facilities to the County for emergency use during the disaster period.

C. Liability. The County shall not be liable for any damage occurring to the property of the company caused by employees of the County in the performance of their duties, except for damage caused to the company's facilities by the negligence of the County's employees. The County shall not be liable for the interruption of service by actions of County employees in the performance of their duties, nor shall the County be held liable for the failure of the company to be able to perform normal services due to acts of God or other factors beyond the control of the County.

D. No Property Right. Nothing in this chapter shall grant to the company any right of property in the County-owned property.

E. Construction Approval by County. The County shall have and maintain the right to inspect the construction, operation and maintenance of the system by the company to insure the proper performance of the terms of the cable television ordinance.

F. Correction of Defects. In the event the company should violate any of the terms of the cable television ordinance codified in this chapter, the County shall immediately give to the company sixty (60) day's written notice to correct such violation and in the event the company does not make such correction within sixty (60) days from the receipt of such written notice, the County may make such correction itself and charge the cost of same to the company, and the company shall pay such charges within thirty (30) days after the receipt of a statement for such charge from the County.

#### SECTION 16. Publication Costs and Legal Fees.

The company shall assume the costs of the publication of the ordinance codified in this chapter if such publication is required by law. A bill for publication costs shall be presented to the company by the appropriate county officials upon the company's filing of its acceptance of the ordinance codified in this chapter and the said publication costs shall be paid at that time by the company. The County shall assume the costs of the County Attorney and associated legal fees.

SECTION 17. Payments to the County.

A. The company shall, commencing one (1) year from the date of the first service, and during each year of operation under this chapter, pay to the County three percent (3%) of the annual gross subscriber revenues received by the company for regular monthly cable television services rendered to customers located within the Town. At the time of this annual payment, the company shall furnish the County with an operating report showing the company's annual gross subscriber revenues during the preceding year.

B. All payments as required by the company to the County shall be made semi-annually and shall be due forty-five (45) days after the close of the six (6) month period.

SECTION 18. Rates and Charges--Designated.

A. Except as otherwise provided the grantee shall have the right, privilege and authority to charge the rates and charges fixed in this section to its subscribers for its services.

B. At system turnon single-user rates and charges may be as follows: Description:

Installation--Not to exceed \$ 20.<sup>00</sup> per standard installation.

Basic Service Charge--Initial Outlet--Not to exceed \$ 10.<sup>00</sup> monthly.

C. Multi-user rates and charges may be negotiated between the grantee and the subscriber, but in no event shall the multi-user rates and charges for any subscriber exceed the aggregate rates and charges which would be charged to the multi-user if computed on the basis of single-user rates and charges.

D. In addition to the specified monthly service rate, the company may add to that rate, taxes or fees imposed upon the company's gross subscriber revenues by county, state or federal governmental or legislative bodies and fees or charges imposed upon the company for the use and distribution of copyrighted program material.

E. Grantee may, at its own discretion, waive, reduce or suspend connection fees for specific or indeterminate periods and/or monthly service fees for promotional purposes.

SECTION 19. Rates and Charges--Change.

A. For the purpose of this section, "basic monthly cable television service" is the provision of television broadcast sig-

nals and access and origination channels, if any, and does not include advertising services, rental of studios or equipment, provision of program production services, tiered channels, per-channel or per-program charges to subscribers ("pay cable"), rental of channels, sale of channel time, provision of commercial services such as security systems, or any other services of the system, the rates and charges for which shall not require approval by the County.

B. In consideration for the services rendered to the subscribers, grantee may have the right to charge and collect reasonable and just compensation which shall reflect, among other things, the grantee's need to attract new capital and provide a reasonable return on invested capital. The Company, from time to time, may alter these rates at its discretion.

C. Before instituting any increase, grantee will furnish to the County Board of Commissioners a copy of the proposed new rates and charges, as well as information regarding Bureau of Labor Statistics figures on the Consumer Price Index. Such notification shall precede any increase by not less than thirty (30) days.

D. In no event shall rates be increased for a period of one (1) year following award of franchise for basic service.

SECTION 20. Recordkeeping. The company shall keep full, true, accurate and current records, maps, plans, and other like materials, and shall be made available for inspection by the County.

SECTION 21. Service Procedures. During the term of the ordinance codified in this chapter, and any renewal thereof, the company shall maintain within the County a nearby business office or agent for the purpose of receiving and resolving all questions regarding the quality of service, equipment, malfunctions and similar matters. The provisions of this section shall be complied with if company may be reached by a toll-free telephone call to receive complaints regarding quality of service, equipment malfunctions and similar matters. The office shall be open to receive inquiries or complaints from subscribers during normal business hours, and in no event less than nine a.m. (9:00) to five p.m. (5:00), Monday through Friday.

A. Any complaints from subscribers shall be investigated and acted upon as soon as possible, but at least within five (5) business days of their receipt. The company shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof.

B. The company shall by appropriate means, such as a card or brochure, as subscribers are connected or reconnected to the system, furnish information concerning the procedures for making inquiries and/or complaints, including the name, address and telephone number of the company.

C. The equipment installed by the Company on behalf of the subscriber shall remain the property of the Company, and shall be subject to reasonable inspection and service by the Company at reasonable hours, and removal upon non-payment or termination of the service.

D. In the event that any subscriber shall fail to meet his obligations according to the rate schedule and to meet reasonable Company rules and regulations, the Company shall have the right to withhold or deny services to such subscriber.

SECTION 22. Protection of Privacy.

A. Grantee shall not permit the installation of any special terminal equipment in any subscriber's premises that will permit transmission from subscriber's premises of two-way services utilizing aural, visual or digital signals without first obtaining written permission of the subscriber.

B. It is unlawful for any person to attach or affix or cause to be attached or affixed any equipment or device which allows access or use of the cable television service without payment to the grantee for same. Such action shall be a simple misdemeanor.

SECTION 23. Program Content Restrictions. In addition to providing basic cable television service consisting of broadcast and automated signals, the company may offer subscribers optional services on a per-program or per-channel basis. However, the company shall not display X-rated motion pictures either as part of its basic cable or pay cable services.

SECTION 24. Employment--Discrimination Prohibited. The Company shall not refuse to hire, nor discriminate against any person regarding compensation, terms, conditions, or privileges of employment because of sex, age, race, color, creed or national origin. The Company shall take affirmative action to insure that employees are treated, during employment, without regard to their sex, age, race, color, creed or national origin.

SECTION 25. Liability and Indemnification. The company shall indemnify the County, and hold it harmless from all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to this chapter. The County shall notify the company's representative within fifteen (15) days after the presentation of any claim or demand to the County, either by suit, or otherwise, made against the County on account of any negligence or contract as aforesaid on the part of the company.

A. Company shall carry Workmen's Compensation insurance with statutory limits, and Employers' Liability insurance with limits of not less than One Hundred Thousand Dollars (\$100,000.00), which shall cover all operations to be performed by company as a result of this chapter.

B. The amounts of insurance to be carried for liability due to property damage shall be Five Hundred Thousand Dollars (\$500,000.00) as to any one occurrence and against liability due to injury or death of persons, Five Hundred Thousand Dollars (\$500,000.00) as to any one person and One Million Dollars (\$1,000,000.00) as to any one occurrence.

C. Company's Workmen's Compensation, Comprehensive General Liability and Comprehensive Automobile Liability insurance shall be written by an insurance company authorized to do business in the state of Indiana, and company agrees to furnish County with certificates of insurance of said policies, which shall provide that insurance shall not be cancelled unless ten (10) day's prior written notice first be given to County.

SECTION 26. Activities Prohibited.

A. The company shall not allow its cable or other operations to interfere with television reception of persons not served by the company, nor shall the system interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents of the County.

B. The company shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage; provided, that nothing in this chapter shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled.

C. 1. No person, whether or not a subscriber to the cable system may intentionally or knowingly damage, or cause to be damaged, any wire, cable, conduit, equipment or apparatus of the company, or commit any act with intent to cause such damage, or to tap, tamper with, or otherwise connect any wire or device to a wire, cable, conduit, equipment and apparatus, or appurtenances of the company with the intent to obtain a signal or impulse from the cable system without authorization from or compensation to the company, or to obtain cable television or other communications service with intent to cheat or defraud the company of any lawful charge to which it is entitled.

2. Any person convicted of violating any provision of this section is subject to a fine of not less than Fifty Dollars (\$50.00), nor more than Five Hundred Dollars (\$500.00) for each offense. Each day's violation of this section shall be considered a separate offense.

SECTION 27. Violation--Penalty. Should the company, its successors or assigns violate any of the provisions of this chapter or any reasonable rules and regulations established by the County pursuant hereto and should such violation continue for more than sixty (60) days after the County has given the company written notice of such violation, failure or default, the same shall be

cause for the forfeiture or revocation of the ordinance codified in this chapter and the termination of all rights hereunder; provided, however, any delay in correcting such violation which is caused by factors beyond the control of the company shall not be included in computing the length of the continuance of such violation.

SECTION 28. Repealer. That all ordinances in conflict herewith are hereby repealed. They are: NONE

SECTION 29. Severability Clause. If any section provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 30. When Effective. This ordinance shall be in effect after its final passage, approval, publication, or posting as provided by law.

Passed and adopted this 24<sup>th</sup> day of MARCH, 1986.

County Of:

LaPorte  
Michael T. Quinn  
President of Board  
of Commissioners  
Michael T. Quinn, President

ATTEST:

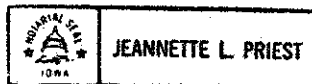
Alice J. Byrd  
Alice J. Byrd  
LaPorte, County Auditor

Kenneth W. Swanson  
Commissioner  
Kenneth W. Swanson  
Commissioner

ACCEPTED:

Douglas Sheldahl, President  
OAK CABLE SYSTEMS, INC.

ATTEST:

 JEANNETTE L. PRIEST

Jeannette L. Priest

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